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COURT OF CRIMINAL APPEALS
AUSTIN, TEXAS
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DEANA WILLIAMSON
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No. PD-0636-19

TO THE COURT OF CRIMINAL APPEALS

OF THE STATE OF TEXAS

FILED
COURT OF CRIMINAL APPEALS
2/21/2020
DEANA WILLIAMSON, CLERK

MICHAEL ANTHONY HAMMACK, Appellant

v.

THE STATE OF TEXAS, Appellee

Appeal from Hunt County
No. 06-18-00212-CR

* * * * *

STATE'S BRIEF ON THE MERITS

* * * * *

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Oral Argument Granted

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IDENTITY OF JUDGE, PARTIES, AND COUNSEL

* The parties to the trial court's judgment are the State of Texas and Appellant, Michael Anthony Hammack.

* The trial Judge was the Honorable Keli M. Aiken, 354th Judicial District, Hunt County.

* Counsel for the State at trial and on appeal was Christopher J. Bridger, 2507 Lee Street, Fourth Floor, Greenville, Texas 75401.

* Counsel for the State before the Court of Criminal Appeals is Stacey M. Soule, State Prosecuting Attorney, P.O. Box 13046, Austin, Texas 78711.

* Counsel for Appellant at trial was Toby C. Wilkinson, 2815 Wesley Street, Greenville, Texas 75401.

* Counsel for Appellant before the court of appeals and the Court of Criminal Appeals is Jessica McDonald, P.O. Box 9318, Greenville, Texas 75404.

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TO THE COURT OF CRIMINAL APPEALS

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* * * * *

STATE'S BRIEF ON THE MERITS

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TO THE HONORABLE COURT OF CRIMINAL APPEALS:

This case should be dismissed as improvidently granted because the court of appeals correctly applied settled sufficiency law.

A person interferes with child custody under TEX. PENAL CODE § 25.03(a)(1) by knowingly taking or retaining custody of a child in violation of the "express terms" of a custody order. Here, as the lower court determined, the Child Protective Services (CPS) conservator's oral notice to Appellant that CPS was granted custody

of his daughter by court order, *sans* qualification, proves actual knowledge. Further, the lower court correctly held that Appellant's actual knowledge of CPS's custody and his concomitant loss of custody was evidenced by his conduct.

STATEMENT REGARDING ORAL ARGUMENT

The Court granted oral argument.

STATEMENT OF THE CASE

Appellant was convicted of interfering with child custody. 1 CR 112. His two-year-state-jail sentence was suspended; he was granted community supervision for five years and fined $10,000. 1 CR 112. He appealed, claiming the evidence was insufficient to prove he knowingly violated the terms of an emergency protective order granting CPS[1] custody of his teenage daughter. *Hammack v. State*, No. 06-18-00212-CR, 2019 WL 2292334, at *1 (Tex. App.—Texarkana May 30, 2019) (not designated for publication). The court of appeals disagreed and affirmed in an unpublished opinion. *Id*. at *2-3.

[1] The SPA uses CPS and the Department of Family and Protective Services (DFPS) interchangeably. CPS is a "program" of DFPS. *See, generally*, CPS Handbook, 1000 Organization and Administration, available at https://www.dfps.state.tx.us/handbooks/CPS/Files/CPS_pg_1000.asp#CPS_1100.

STATEMENT OF PROCEDURAL HISTORY

The court of appeals rejected Appellant's sufficiency challenge and affirmed Appellant's conviction and sentence. *Id*. Appellant's petition for discretionary review was granted on November 6, 2019.

ISSUE PRESENTED

"The Court of Appeals erred by finding that the evidence was legally sufficient to find Appellant guilty of interfering with child custody because the State failed to prove beyond a reasonable doubt that Appellant knowingly violated the express terms of a judgment or order when Appellant was never served the order, never saw the order, and never had the terms of the order explained to him in either open court or in any other manner."

Issue Restated

When Appellant was told that CPS took custody of his daughter pursuant to a court order and writ of attachment and Appellant consistently acknowledged the fact and legal effect of the order to CPS and police, how can the evidence be insufficient to prove he knowingly interfered with custody?

It can't.

SUMMARY OF THE ARGUMENT

The emergency order granted CPS custody of Appellant's sixteen-year-old daughter D.H., thus stripping Appellant of custody. This is the only term material to his prosecution for knowingly interfering with child custody. It was expressly relayed to him by the CPS investigator-conservator who owed D.H. a duty of care. Appellant adopted that information as fact and fully recognized its legal effect. All of

Appellant's interactions with CPS and police showed, beyond a reasonable doubt, that he knew CPS had exclusive custody of his daughter. And by extension, his conduct proved that he knew *he*, as the subject of an ongoing investigation into his alleged abuse of D.H., was divested of custody.

Specific instances of Appellant's conduct proving knowledge of the custody term include:

- questioning the CPS conservator about the order's issuing judge but refusing to get the order from CPS and discuss it when given the time and place to do so and failing to object to its validity in any form.
- allowing an officer to search his home for D.H. and then later hindering D.H.'s apprehension by another officer when caught helping hide D.H. in her grandmother's attic.
- attempting to emancipate D.H. by authorizing her marriage as a minor in Oklahoma while she remained on the lamb after escaping CPS custody.
- having D.H. in his house on March 6th when he knew about the authorities' nearly week-long search for her and during which he permitted D.H. to marry in Oklahoma.

All of the evidence made clear that Appellant knew authorities did not want D.H. to be with Appellant under any circumstances because CPS was the only authorized custodian. There was no rational basis for him to conclude otherwise unless told so by authorities or a court. Appellant therefore knowingly violated an express term of the custody order.

FACTS

I. Charged Offense: Interference with Child Custody.

CPS obtained an emergency court order granting it sole conservatorship of Appellant's sixteen-year-old pregnant daughter D.H. 8 RR 4-8 (State's Exhibit 2). Appellant was charged with interfering with child custody under TEX. PENAL CODE § 25.03(a)(1) for knowingly taking or retaining custody of D.H. in violation of the "express terms of a judgment or order, including a temporary order, of a court disposing of the child's custody." 1 CR 5.

II. Guilt-Phase.

As an initial matter, it is not contested that Appellant was not served with a written copy of the order or writ of attachment. *See* 6 RR 94, 97, 100-02, 156-57. This case hinges on actual personal notice.

A. The Initial Investigation.

D.H.'s school counselor contacted DFPS to investigate allegations of abuse committed by Appellant. 6 RR 71. DFPS Investigator Amber Davidson began her inquiry on February 23, 2018. 6 RR 71. Davidson called Appellant, told him about the investigation, and asked to speak with him; Appellant told her to find a "real" job. 6 RR 72. When Davidson went to Appellant's house the next day, he ordered her to "get off his property." 6 RR 73. She said she'd get a court order; Appellant replied,

"that would be [her] best bet." 6 RR 73, 98.

B. The Express Term: CPS Custody of D.H. Per Protective Order and Writ of Attachment.

On February 27th, Davidson obtained an emergency order for protection granting CPS custody of D.H. and a Writ of Attachment commanding that D.H. be delivered to CPS. 6 RR 74; 8 RR 3-10 (State's Exhibit 2, 3A). Davidson went to D.H.'s school and took custody of D.H. 6 RR 80, 111, 116. Once they were at the CPS office, Davidson called Appellant to tell him she had picked up D.H. at school pursuant to "a Writ of Attachment, Order of Protection"; she asked him to meet her at the CPS office to "get him the paperwork" and "speak" about the "situation." 6 RR 81, 84. Appellant questioned Davidson about the judge who issued the order, stating "that can't be possible because I only work with a different judge." 6 RR 82. Appellant was angry; Davidson replied, "he didn't dictate which judge [CPS] used." 6 RR 84. Appellant said he had "other things in life to do and . . . was going about his business." 6 RR 82, 97. Davidson testified that Appellant, who knew he was being investigated for abuse and had told her to get a warrant, understood she had a court order granting CPS "custody" at this point in time but refused to meet with her. 6 RR 84, 95, 97-98.

DFPS Investigator Rhonda West recalled that she and Davidson went to

Appellant's house to serve him with the order and tell him that they had taken custody of D.H. 6 RR 138. Appellant, she believed, knew who they were; they explained why they were there but did not "detail the order" or "lay out all of the provisions." 6 RR 139, 141. Appellant told them to leave his property and was "aggressive"; they returned to the CPS office. 6 RR 138, 158. West testified she had "no doubt" Appellant knew an order had been issued for CPS to "remove" D.H. but conceded that relaying the existence of an order does not "detail what everybody in that suit's rights are." 6 RR 139-40, 160-61.

C. Searching for Runaway D.H.

D.H. ran away from the CPS office after Davidson called Appellant on the 27th. 6 RR 85-86, 120. Shortly after, Appellant called and asked where D.H. was and how they could "lose" her. 6 RR 85. From this, Davidson concluded Appellant "already knew his daughter was missing." 6 RR 85. Davidson, DFPS Investigator Alvarado Torres, and Officer Kelvin Gene Rhodes, Jr. looked for D.H. that night at Appellant's house and at the homes of D.H.'s mother, grandmother, sister, and boyfriend. 6 RR 44, 46, 87-88, 122, 168. At Appellant's house, Rhodes explained that he was searching for runaway D.H. because she was "in the custody" of CPS. 6 RR 51-52. Appellant was not "surprised" and indicated he had not seen her since CPS had picked her up at school. 6 RR 41-42, 51. Appellant allowed Rhodes to

briefly search his house; D.H. was not there. 6 RR 42. Rhodes did not witness anyone serve Appellant with the order. 6 RR 48. DFPS Investigator Alvarado Torres stated that Appellant directed an officer (presumably Rhodes) to tell them to leave his property. 6 RR 123.

Late that night, Davidson and Torres returned to D.H.'s grandmother's house after their initial search and saw another car parked there. 6 RR 124. They called the police to inquire about the car and, while waiting for them, they saw Appellant, D.H., and D.H.'s boyfriend go inside the house. 6 RR 124. Sergeant Marcus Cantera, who had been briefed on the situation, including about Rhodes' earlier visit to Appellant's house, responded to the call. 6 RR 56-58.

Cantera told Davidson and Torres to remain in their parked car and then knocked on door; Cantera informed D.H.'s grandmother Linda Hammack that there was a writ for D.H. to be "picked up" and that she had escaped. 6 RR 56-57, 171. Linda allowed Cantera to enter her house. 6 RR 57-58, 169. Cantera saw Appellant halfway up an attic ladder; he could "hear movement and voices" and "people talking" in the attic. 6 RR 58. Knowing about Rhodes' earlier interaction with Appellant at his house, Cantera concluded someone was trying to hide. 6 RR 58-59. Appellant became argumentative and convinced Linda to revoke her consent for Cantera to be in the house. 6 RR 59-61. Now outside, Cantera told Appellant how

it's going to "look" if he refused to help the police and CPS in their search for D.H. 6 RR 61. Appellant, Cantera opined, did not care. 6 RR 62. Cantera testified that Appellant was aware CPS was searching for D.H. because they had custody and that he saw CPS parked three to four feet from Linda's property. 6 RR 61-65. Linda testified that she never saw or heard about any orders or paperwork; she just knew they wanted to pick up D.H. 6 RR 168-71.

Davidson and others looked for D.H. over the remainder of the week and weekend. 6 RR 89.

D. Finding D.H.

On Tuesday March 6th, an employee at D.H.'s school called CPS to report seeing D.H. at Appellant's house. 6 RR 89. During the school day, Davidson went to the house with a police officer; Davidson waited while the officer retrieved D.H. and escorted her outside. 6 RR 90, 201. Davidson heard Appellant order the officer off his property. 6 RR 100-01.

D.H. told Davidson that Appellant and Linda had taken her to Oklahoma to marry her unborn baby's father. 6 RR 90, 136. Because D.H. was sixteen, Appellant's consent was required. 6 RR 91, 108; 8 RR 16-20 (State's Exhibit 6– application for marriage license).

E. Verdict

The jury found Appellant guilty. 1 CR 97, 112.

III. Court of Appeals' Decision Affirming Appellant's Conviction.

Appellant claimed that the evidence was insufficient to prove he knowingly violated the order. *Hammack*, 2019 WL 2292334, at *1. Recounting the facts in the light most favorable to the verdict, the Texarkana Court of Appeals correctly held that Appellant knew about the order. *Id*. at *2. Evidence established that DFPS investigators attempted to serve the order. *Id*. Additionally, Davidson called Appellant and told him about the order. *Id*. This prompted Appellant to ask about the judge who issued it, and Davidson answered his question. *Id*. Appellant declined Davidson's offer to discuss the situation. *Id*. Further, Appellant was not surprised when Officer Rhodes came to his house looking for D.H. *Id*. Davidson and Torres later saw Appellant and D.H. go inside Linda's house. *Id*. When Sergeant Cantera arrived, he heard movement and peoples' voices in the attic while Appellant was on the attic ladder. *Id*. Cantera testified Appellant knew CPS had temporary custody of D.H. *Id*. The evidence therefore showed that Appellant was at least participating in secreting D.H. in Linda's attic. *Id*. at *3. Finally, D.H. was ultimately found at Appellant's house after Appellant consented to her marriage in Oklahoma. *Id*.

The court of appeals' sufficiency analysis is in accord with the law.

ARGUMENT

I. Sufficiency Standard of Review.

When reviewing the sufficiency of the evidence, all of the evidence is considered in the light most favorable to the verdict to determine whether, based on that evidence and the reasonable inferences therefrom, the factfinder was justified in finding guilt beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979). The factfinder is the sole judge of credibility and weight given to evidence and is permitted to draw multiple reasonable inferences from facts when supported by the evidence *Id*. at 319. When there are conflicting inferences, it must be presumed that the factfinder resolved them in favor of the verdict. *Id*. at 326. The factfinder, as this Court has repeatedly asserted, is best suited to observe firsthand the demeanor, facial expressions, mannerisms, inflection, and cadence of witnesses. *See Brooks v. State*, 323 S.W.3d 893, 899-900 (Tex. Crim. App. 2010) (plurality); *Laster v. State*, 275 S.W.3d 512, 517 (Tex. Crim. App. 2009). Intent and knowledge can be inferred from the acts, words, and conduct of the accused. *Manrique v. State*, 994 S.W.2d 640, 649 (Tex. Crim. App. 1999).

At issue here is Appellant's knowledge of a single express term of the order. To prove knowledge with respect to this circumstance surrounding his conduct, the State had to show Appellant was aware that the circumstance existed. TEX. PENAL

CODE § 6.03(b).

II. Service of the Order is Not an Element of TEX. PENAL CODE § 25.03(a)(1).

Formal, written service is not required to prove a violation of the "express terms of a judgment or order, including a temporary order, of a court disposing of the child's custody." TEX. PENAL CODE § 25.03(a)(1). The terms of the custody interference statute do not require it. And such an element[2] would be absurd, particularly here where oral notice of the custody ruling was explicitly given by the state-agent conservator.

In *Harvey v. State*, this Court held that the offense of violating a protective order requires that the defendant had knowledge of the order. 78 S.W.3d 368, 372-73 (Tex. Crim. App. 2002). There, the statutory elements charged provided: "A person knowingly commits the offense of violation of a Protective order if, in violation of a protective order issued after notice and a hearing, the person knowingly commits family violence." *Id*. at 369; TEX. PENAL CODE § 25.07(a) (violation of a protective order). Taking into account the specific statutory notice requirements required to make a protective order "binding," this Court held that knowledge of the order must have been obtained from a proceeding the defendant attended or after a hearing in

[2] Appellant has not raised this argument; Appellant appears to concede that verbal notice would authorize a conviction. Appellant's Brief at 9. Appellant's framed controversy is entirely fact-based.

which the defendant had prior notice of the application and hearing. *Id*. at 371-73. The Court stated, however, that knowledge of the order's particulars goes "too far"; a defendant need only be provided the resources to learn the provisions. *Id*. at 373. Finally, as an aside for future cases, the Court confronted the possibility that an out-of-state order may be entered without notice and indicated "actual notice of the order" would be sufficient to prove the offense. *Id*.

Although service of the custody order was required under the Family Code,[3] Penal Code Section 25.03(a)(1) plainly states that knowledge of the "express terms" of the order is required to prove criminal conduct. This is noticeably the opposite of

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[3] TEX. FAM. CODE § 152.311(d) requires that the "respondent . . . be served with the petition, warrant, and order immediately after the child is taken into physical custody." Service can be accomplished by in-person delivery or registered or certified mail. TEX. R. CIV. P. 106(a), (b) (alternative procedures when service was attempted but unsuccessful).

Any ultra-belated collateral attack on the validity of the order for failure to meet strict service requirements must be swiftly rejected since Appellant stipulated to it being legally effective or "valid." 8 RR 14. Appellant is therefore precluded from even attempting to establish any jurisdictional defect in the order. *See, e.g., Ex parte Rodriguez*, 466 S.W.3d 846, 852, 854 (Tex. Crim. App. 2015) (on a collateral attack, an appellant must "affirmatively" prove that a juvenile transfer order failed to confer jurisdiction due to the failure to comply with service-based jurisdictional requirements); *see also Rhodes v. State*, 240 S.W.3d 882, 891 (Tex. Crim. App. 2007) (the applicability exception to estoppel by judgment is subject-matter jurisdiction claims); *In re Griffin*, 431 P.2d 625, 628 (Cal. 1967) ("When, as here, the court has jurisdiction of the subject, a party who seeks or consents to action beyond the court's power as defined by statute or decisional rule may be estopped to complain of the ensuing action in excess of jurisdiction.").

how this Court has construed the mental state requirement governing a violation of non-emergency protective orders. Because actual knowledge of the "terms" is the key in Section 25.03(a)(1), written service is not an element that should be read into the offense. To do so would limit the reach of the statute's plain text by preventing the prosecution of conduct the Legislature intended to prohibit.

In sum, service is not an element of interfering with child custody, and only one term was material—that CPS was granted emergency custody, thereby extinguishing Appellant's custody rights. Appellant has never challenged the scope of that term; however, the record shows it was all-inclusive, and Appellant knew it.

III. Appellant Knew the Emergency Order Stripped His Custody Rights.

Even without having been formally served with the written February 27th order, Appellant knew he violated its express term granting CPS physical custody. TEX. PENAL CODE § 25.03(a)(1), (d). Appellant received explicit oral notice, and his subsequent conduct and interactions projected an absolute understanding that he lost all custody of his daughter to CPS.

A. Davidson's Duty and Proven Veracity.

After an unsuccessful attempt to talk to Appellant about the abuse allegations, Davidson applied for the order and was responsible for executing its directive. CPS was granted custody of D.H. because a district judge determined that it was in her best interest. TEX. FAM. CODE § 153.002 (best interest of child is the primary consideration in conservatorship). Davidson was the assigned conservator and therefore also acted with D.H.'s best interest in mind. By statute, she owed D.H. a "duty of care, control, and protection[.]" TEX. FAM. CODE § 153.371(2). The jury was entitled to believe that Davidson truthfully relayed to Appellant at least one express term of the order—that CPS was granted custody of D.H. Appellant was thus provided "Personal Notice," which is defined as "*oral* or written notice, according to the circumstances given *directly to the affected party*." BLACK'S LAW DICTIONARY, 1091 (Deluxe 8th ed. 1999) (emphasis added); *Cabrera v. State*, 647 S.W.2d 654, 655

(Tex. Crim. App. 1983) (suggesting that notice of custody order could have been satisfied if it was explained to a parent who only understood some English). As a corollary, the jury was also entitled to find that Appellant knew he no longer had any custody rights over D.H.

There is no sensible reason for Appellant to have questioned Davidson's veracity. Her call on the 27th did not come out of the blue; Appellant knew she worked for CPS and had been investigating him for abusing D.H.—who was the only subject of the protective order. And Davidson had done exactly what he suggested when he refused to help with her investigation: she used her authority to get an order of protection. Carrying on with the process, Davidson specifically called Appellant to give him notice that his custody rights had been terminated. 6 RR 84, 95, 97-98, 138 (West states they went to Appellant's house to report taking D.H.). She clearly told Appellant that she picked up D.H. from school and took her to the CPS office pursuant to the terms of the order issued by Judge Aiken. 6 RR 81, 84. The effect on him was obvious. He knew he was a targeted person because he was D.H.'s father and she lived with him; *his* duty of care, custody, and control was impacted. *Compare* 1 CR 8 (Affidavit of Indigence), *with* 8 RR 17 (D.H.'s address on marriage application). The information also apprised Appellant of the judge to whom he could lodge any objections about the custody determination. Appellant did not formally or

informally contest CPS's authority to assume custody of D.H. or the order's validity generally (even when she was taken from his house on March 6th). He just didn't like the exercise of that authority. So, any argument that Appellant did not trust Davidson or that the jury's verdict rests on an adverse party's opinion can easily be set aside. *See* Appellant's Brief at 9. Had Appellant truly questioned her authority and veracity, he would have gone to the CPS office when Davidson told him to do so. Instead, he flippantly informed her he had "other things in life to do" and "was going about his business." 6 RR 82. That Appellant did not avail himself of the opportunity to request documentation or further explanation from Davidson shows understanding and acceptance. *Cf. Johnson v. State*, 912 S.W.2d 227, 230-31 (Tex. Crim. App. 1995) (a defendant can only claim the protection of the Fourth Amendment if the defendant yielded to the officer's show of authority to detain or arrest).

At bottom, Appellant believed Davidson and adopted as fact information she had given and its legal significance. *Cf.* TEX. R. EVID. 801(e)(2)(B) (recognizing that opposing party's statement can be adopted or believed by that party to be true); *Clayton v. State*, 235 S.W.3d 772, 780-81 (Tex. Crim. App. 2007) (knowledge of arrest warrant inferred from flight, fact that family members were told about it, and that the defendant's attorney asked police about it).

B. Knowledge Bred from Contempt.

Appellant's own statements and conduct prove his knowledge beyond a reasonable doubt. *Cf. Ford v. State*, 305 S.W.3d 530, 534 (Tex. Crim. App. 2009) (prosecutor's appropriate response to defense's objection show that factual and legal basis of the objection was clear to the prosecutor). Appellant first acknowledged the order's existence and, more importantly, its "protection" decree when he complained on the phone to Davidson that he "worked with" a "different" judge. 6 RR 82. Then, later that same day, recognition was apparent when he called Davidson to ask about D.H.'s location after her escape and again, in person, when he told Officer Rhodes he had not seen D.H. since CPS picked her up. 6 RR 41-41, 51, 85. He implicitly agreed with Rhodes' justification for pursuing D.H. when he allowed Rhodes to search his house for D.H. 6 RR 42. Appellant, who declined to cooperate and behaved with contempt, would have denied Rhodes permission to search his home had he disbelieved Davidson's representations.

Further confirmation was shown at Linda's house around midnight that night. 6 RR 169. Davidson and Torres saw D.H. go inside Linda's house with Appellant. When Linda gave Sergeant Cantera consent to enter without input from Appellant, Appellant was caught by surprise while in the process of secreting D.H. in Linda's attic. 6 RR 58-59, 124; *see Laster*, 275 S.W.3d at 522 (intent to hold or secret child

could be inferred from defendant's act of pulling the child away from her brother). Appellant became argumentative and accused Cantera of violating his rights because he didn't have a search warrant. 6 RR 59. Cantera informed him Linda consented to his entry, and Appellant convinced her to rescind consent. 6 RR 59-60. Appellant also knew CPS was on the street and declined to help Cantera or ask for a copy of the order. 6 RR 61-65. Had Appellant believed he had legal custody of D.H., a fact typically innocuous among parents, then there is no rational justification to explain his involvement in hiding D.H. or his aggression or insistence that his mother revoke her consent. *Cf. Gill v. State*, 873 S.W.2d 45, 48 (Tex. Crim. App. 1994) (defendant's secretive actions after the offense used as a corroborating circumstance); *Cawley v. State*, 310 S.W.2d 340, 342 (Tex. Crim. App. 1957) ("Escape, flight and attempts to escape are always admissible as evidence of guilt.").

Appellant's knowledge is also established by his recognition that he was the prime target of their investigation and search. They asked Appellant directly about D.H.'s location and if she was at home. 6RR 41-48. They also inquired at his mother's (Linda's) house shortly after he was seen going inside with D.H. 6 RR 56-57, 171. Because authorities doggedly hunted down D.H. to regain custody, Appellant was on notice that CPS's retrieval of D.H. was as important to CPS as Appellant—a possible child abuser—*not* having custody of her.

C. Emancipation: Attempted Escape-Valve.

That Appellant took pregnant sixteen-year-old D.H. to Oklahoma so she could marry her boyfriend also goes towards proving knowledge. It was entirely rational to conclude that Appellant hurriedly had his daughter married in an effort to supplant the court order. *See Guevara v. State*, 152 S.W.3d 45, 50 (Tex. Crim. App. 2004) ("motive" is a significant circumstance indicating guilt). Having lost custody and knowing that CPS would not abandon its search for D.H., Appellant sought a layman's work-around. Appellant likely assumed that, once married, D.H. would be emancipated and put the whole matter of CPS's unwanted meddling to rest.[4] This could be construed as a blatant disregard for the order and as vengeance. The

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[4] *See* TEX. FAM. CODE § 1.104 (regardless of age, a person married in accordance with the law of this state has the capacity and power of an adult).

Ultimately, Appellant was incorrect about the legal effect of the marriage. "A marriage is void if either party to the marriage is younger than 18 years of age, unless a court order removing the disabilities of minority of the party for general purposes has been obtained in this state or in another state." TEX. FAM. CODE § 6.205 (Marriage to Minor). CPS's legal authority over D.H. precludes any finding that D.H.'s minority disability was removed for general purposes in Texas, and there is no like order from Oklahoma in the record. *See, generally*, TEX. FAM. CODE § 31.001 (requirements for removing disabilities of a minor). D.H.'s marriage was therefore void. *See Broussard v. Arnel*,__S.W.3d__, No. 01-18-00687-CV, 2019 WL 7341672, at *3-8 (Tex. App.—Houston [1st Dist.] 2019) (marriage with emancipation status in Missouri of fifteen-year-old is void in Texas and not recognizable under choice-of-law rules or the Full Faith and Credit Clause because it is contrary to Texas' public policy and void under Texas law).

decision to facilitate[5] the out-of-state marriage within days of CPS obtaining custody and knowing she was on the run proves Appellant's knowledge. *See Cordova v. State*, 698 S.W.2d 107, 111 (Tex. Crim. App. 1985) ("the court may look to events occurring before, during and after the commission of the offense, and may rely on actions of the defendant which show an understanding and common design to do the prohibited act.").

D. Contempt Breeds Contamination of Knowledge.

The significance of Appellant's statements and conduct was not lost on the CPS investigators and police officers. Interacting with Appellant firsthand, they astutely concluded that Appellant knew that CPS had custody of D.H. and that they wanted to remove D.H. from *him*.

- Davidson stated Appellant understood she had a court order granting CPS custody, and he refused to meet with her to discuss it. 6 RR 84, 89, 97-98.
- West testified she had "no doubt" Appellant knew an order had been issued for CPS to "remove" D.H. 6 RR 139-40, 160-61.
- Officer Rhodes testified Appellant was not surprised when he was looking for missing D.H. after CPS had taken custody of her at school. 6 RR 42.

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[5] The order also prohibited Appellant from making any legal decisions on behalf of D.H.; however, because Davidson did not explicitly tell Appellant about that term of the order, it cannot be said Appellant was aware of it. *See* TEX. FAM. CODE § 153.371(7) (granting conservator the right to consent to marriage); 8 RR 5 (State's Exhibit 2).

- Sergeant Cantera said Appellant was aware CPS was searching for D.H. because they had custody her, and Appellant saw CPS parked by Linda's house. 6 RR 61-65.

Jurors were entitled to believe these conclusions based on the witnesses' own personal experience and knowledge of the events.

IV. Conclusion.

In an emergency involving a child, proof of actual notice should suffice when the written order or terms were not furnished. Notice is notice regardless of the mode of transmission; modes must be flexible so that the purpose of a custody protection order is achieved. The point of notice is to convey matters having legal significance in accord with due process. When the term is expressly conveyed in any manner, notice for purposes of Section 25.03(a)(1) is satisfied. To equate service with notice in Section 25.03(a)(1) would create a rule that elevates form over substance.

Applying the plain text of Section 25.03(a)(1), the evidence firmly established that Appellant knew CPS had absolute custody of his daughter; there were no qualifications. A rational jury reached this conclusion, and this Court must defer to all factfindings in favor of its verdict. Setting aside the verdict would reinstate the discarded alternative-reasonable-hypothesis construct and stretch it to absurdity and would effectively create a *de novo* fact standard of review. Both are contrary to *Jackson*'s mandate. This case should be dismissed as improvidently granted or,

alternatively, the court of appeals' decision should be affirmed.

PRAYER FOR RELIEF

Because the court of appeals correctly applied established sufficiency law to the specific facts, the Court should reconsider its decision to exercise its discretionary review authority and dismiss the petition as improvidently granted. Alternatively, the court of appeals decision should be affirmed.

Respectfully submitted,

/s/ Stacey M. Soule
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CERTIFICATE OF COMPLIANCE

The undersigned certifies that according to the WordPerfect word count tool this document contains 4,370, exclusive of the items excepted by TEX. R. APP. P. 9.4(i)(1).

/s/ Stacey M. Soule
State Prosecuting Attorney

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the State's Brief has been served on February 21, 2020, via email or certified electronic service provider to:

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